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RECENT CASE NOTES

ADMIRALTY—JURISDICTION—NON-MARITIME TORTS—IN REM ACTION IN STATE COURT FOR INJURY TO OBJECT ON SHORE.—While employed as a stevedore by the defendant vessel and while working on the wharf, the plaintiff was injured by a sling-load of cement that was being lowered from the ship. He brought a tort action in the state court against the vessel by name, in accordance with the Oregon "Boat Lien Law." Or. Laws, 1920, sec. 10281 *et seq.* It was objected that the state court had no jurisdiction in an action *in rem* against a foreign vessel. *Held*, that the court had jurisdiction. *Cordrey v. The Bee* (1921, Or.) 201 Pac. 202.

The power of the federal courts is limited to that granted by the Constitution, in which it is provided, that "The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction." Art. 3, sec. 2. It is well established that, in contract matters, admiralty jurisdiction depends upon the nature of the transaction, and in tort matters, upon the locality. *Grant Smith-Porter Ship Co. v. Rhode* (1922) 42 Sup. Ct. 157; see p. 561, *infra*. In the instant case, therefore, admiralty could have no jurisdiction over the tort as such. *Keator v. Rock Plaster Mfg. Co.* (1919, S. D. N. Y.) 256 Fed. 574; *The Bee* (1914, D. Or.) 216 Fed. 709. But a stevedore performs a maritime service, giving the plaintiff a contract claim in admiralty, a point which the two preceding cases seem to have overlooked. *Atlantic Transport Co. v. ImBrovek* (1914) 234 U. S. 52, 34 Sup. Ct. 733. The claim, however, is limited to maintenance and cure, and an indemnity only if the injury were caused by a defective appliance; and it cannot be enlarged by state laws. *Chelentis v. Luckenbach* (1918) 247 U. S. 372, 38 Sup. Ct. 501. Workmen's Compensation statutes create contract rights and are not available. *So. Pacific Co. v. Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 524; see COMMENTS (1917) 27 YALE LAW JOURNAL, 255; (1920) 29 YALE LAW JOURNAL, 925. And where this is the sole remedy of the employee under the state law, a stevedore injured on shore has no claim in tort. *Keator v. Rock Plaster Mfg. Co.* (1918) 224 N. Y. 540, 120 N. E. 56; certiorari denied in *State Industrial Commission v. Rock Plaster Mfg. Co.* (1918) 248 U. S. 574, 39 Sup. Ct. 12. Although the claim is within the admiralty jurisdiction, a state court may maintain an action *in personam* with an attachment of the ship as security. *Knapp, Stout & Co. v. McCaffrey* (1900) 177 U. S. 638, 20 Sup. Ct. 824. But it cannot maintain an action *in rem* if admiralty has jurisdiction. *The Glide* (1897) 167 U. S. 606, 17 Sup. Ct. 930. And the Oregon statute is void in so far as it authorizes the Oregon courts to do so. *Aurora Shipping Co. v. Boyce* (1911, C. C. A. 9th) 191 Fed. 960. But this necessarily cannot apply when the cause of action is not cognizable in admiralty. See *Johnson v. Chicago & P. Elevator Co.* (1886) 119 U. S. 388, 397, 7 Sup. Ct. 254, 258. And even an action *in rem* in the state court should be permitted. See *Knapp, Stout & Co. v. McCaffrey*, *supra*, at p. 647, 20 Sup. Ct. at p. 828. Until Congress has legislated, the state may protect its citizens, the incidental interference with commerce being immaterial. *Pennsylvania Ry. v. Hughes* (1903) 191 U. S. 477, 488, 24 Sup. Ct. 132, 135; see COMMENTS (1921) 30 YALE LAW JOURNAL, 732. In the instant case, however, there are two possible viewpoints. The plaintiff's claim in contract and his claim in tort may be considered as wholly distinct and separate, so that the admiralty jurisdiction in contract does not prevent a state from having jurisdiction *in rem* over the tort. But it seems more in line with the federal policy of uniformity in the maritime law to consider the tort and contract claims as differing remedies arising from the same cause, which is thus within the admiralty jurisdiction.